

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

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MAHS Reg. No.: 15-015551
Issue No.: 2009
Agency Case No.: ██████████
Hearing Date: October 19, 2015
County: Wayne-District 17

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 19, 2015, from Detroit, Michigan. Petitioner represented himself. The Department of Health and Human Services (Department) was represented by ██████████, Assistance Payment Worker.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the disability-based Medical Assistance (MA-P) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On April 3, 2014, Petitioner submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage for January 2014 (Exhibit A, pp. 11-12).
2. On June 22, 2015, the Medical Review Team (MRT) found Petitioner not disabled (Exhibit A, pp. 13-15).
3. On June 24, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice denying the application based on MRT's finding of no disability (Exhibit A, pp. 3-4).

4. On August 25, 2015, the Department received the timely written request for hearing submitted by Petitioner's authorized hearing representative.
5. On September 30, 2015, the authorized hearing representative withdrew its representation of Petitioner.
6. Petitioner alleged disabling impairment due to gout and high blood pressure.
7. At the time of hearing, Petitioner was [REDACTED] years old with an [REDACTED], birth date; he was [REDACTED]" in height and weighed [REDACTED] pounds.
8. Petitioner did not complete the [REDACTED] grade but received a [REDACTED]
9. Petitioner has an employment history of work as a milk delivery person.
10. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

MA-P benefits are available to disabled individuals. BEM 105 (October 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Petitioner alleges disabling impairment due to gout, arthritis, and high blood pressure. The medical evidence presented at the hearing was reviewed and is summarized below.

On March 30, 2015, Petitioner was examined by a doctor at the Department's request. The doctor noted that his blood pressure was 150/90. Petitioner had no vision in his right eye. He has a history of gout with chronic pain in his bones and joints. The

physical exam showed slight edema in the left index finger and complaints of pain in the left hand. Petitioner complained of decreased range of motion of both knees. In examining Petitioner's range of motion of joints, the doctor found that all were normal except the following: (i) flexion of the lumbar spine was 80 degrees (normal is 0 to 90); forward flexion of both hips was 50 degrees (normal was 0 to 100), flexion of both knees was 140 degrees (normal is 1 to 150). The doctor indicated Petitioner had no limitations in his current abilities although he indicated pain when he stood, bent, stooped, carried, pushed, pulled, squat, got on and off the examination table, and climbed stairs. His straight leg raise was 50 degrees in the supine position, 90 degrees in the seated position. Although Petitioner indicated he sometimes used crutches, he was not using crutches at the time of the examination and the doctor indicated that there was no clinical evidence supporting the need for a walking aid (Exhibit A, pp. 17-24).

An eye examination report completed February 26, 2015 indicated that Petitioner complained of reduced vision in both eyes. The doctor reported that Petitioner had cataracts and recommended cataract surgery in the right eye and then the left eye. The doctor indicated that Petitioner's condition was capable of improvement (Exhibit A, pp. 97-98).

The remaining documents in Petitioner's medical file consisted of hospital records from his January 6, 2014 to January 16, 2014 hospitalization (Exhibit A, pp. 27-96, 100-122). Petitioner, who has a history of anemia, came to the hospital following an episode involving a loss of consciousness. It was noted that he was a regular alcohol drinker, drinking 40 ounces daily (Exhibit A, pp. 32-33). There was also admission of marijuana use (Exhibit A, p. 43). A CT of the head showed no evidence of hemorrhage or mass effect. A chest x-ray was normal (Exhibit A, p. 35). His hemoglobin registered at 4.3 and he was noted to be markedly hypertensive; he was also hypothyroid (Exhibit A, pp. 27-28). He was transfused with 2 units of packed red blood cells and admitted to critical care (Exhibit A, p. 43). An x-ray of the left knee showed a large suprapatellar effusion which the doctor concluded was likely gout exacerbation (Exhibit A, pp. 52, 87-88). He was diagnosed with anemia, gout attack, bradycardia and alcoholism (Exhibit A, p. 58). He was treated and discharged once his blood pressure was controlled and his tilt table test came back positive (Exhibit A, p. 28).

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination of whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal

the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings to be considered as disabling without further consideration. Listings 1.02 (major dysfunction of a joint), 4.00 (cardiovascular system), and 14.09 (inflammatory arthritis) were considered. Because Petitioner's impairments are insufficient to meet, or to equal, the severity of a listing, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Petitioner testified that he could walk one and a-half to two blocks, sit without a problem, take stairs, and lift up to 30 pounds. However, he had flare ups of his gout four to five times a month which limited his ability to stand to a minute or two, required that he use crutches to move, and kept his fingers from bending. He also got dizzy when he bent over or squatted. He testified that his flare ups lasted up to 5 days when he did not take his medication and up to a day and a-half when he did take his medication. He lived with a cousin but took care of his own personal hygiene and dressing. He did half of the household chores, including vacuuming and washing dishes. Although he had a suspended license, he believed he could drive except when he had a gout flare-up that affected his feet.

Petitioner's medical record consisted of a single hospitalization for January 6, 2014 to January 16, 2014 following an episode of loss of consciousness and treatment for anemia, hypertension and hypothyroid. During his hospitalization, he was diagnosed with anemia, gout attack, bradycardia and alcoholism. An x-ray of his left knee during the hospitalization showed a large suprapatellar effusion which was likely gout exacerbation. In the March 30, 2015 consultative physical exam, the consulting doctor noted that Petitioner's blood pressure was 150/90, he had a history of gout with chronic pain in his bones and joints, and slight edema in the left index finger. The doctor found normal range of motion in Petitioner's joints other than the lumbar spine, forward flexion of both hips, flexion of both knees. She found no limitations in Petitioner's abilities or reflexes although she noted that he complained of pain when he performed many of the requested actions.

The medical evidence supported Petitioner's complaints of joint pain and dizziness. However, although Petitioner alleged that he would have gout flare ups up to five times a month and would go to the hospital when the pain was significant, there was documentary evidence of only one hospitalization in January 2014 and Petitioner's testimony of a second hospitalization in September 2015. Petitioner also testified that his medication helped control his flare ups.

In light of the intermittent nature of his flare ups and Petitioner's testimony concerning his ability to lift up to 30 pounds and his ability to perform many of the activities of daily living without significant limitations, ultimately, after review of the entire, it is found that Petitioner maintains the physical RFC to perform light work as defined by 20 CFR 416.967(b).

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a milk delivery person, whose job involved three hours of standing and unloading and loading up to 25 pounds of merchandise on a daily routine basis. This job involves light to medium work. As determined in the RFC analysis above, Petitioner is limited to no more than light work activities. In light of the entire record and Petitioner's RFC, it is

found that Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain SGA. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, Petitioner was ■ years old at application and ■ years old at the time of hearing and, thus, considered to be closely approaching advanced age (■■■■■■) for purposes of Appendix 2. He has a ■■■■■ and a history of unskilled work experience. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities. In this case, based on Petitioner's age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 202.13, result in a finding that Petitioner is **not** disabled based on his exertional limitations.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner **not disabled** for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **10/30/2015**

Date Mailed: **10/30/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]